

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Minnesota Center for Environmental
Advocacy,

Civil No. 03-5450 (DWF/SRN)

Plaintiff,

v.

ORDER

Environmental Protection Agency,
United States; Stephen L. Johnson,
in his official capacity as Administrator
of the United States Environmental Protection
Agency; Environmental Protection Agency,
sued as United States Environmental Protection
Agency, Region 5; and Bharat Mathur, in his
official capacity as Acting Regional Administrator
of the United States Environmental Protection
Agency,

Defendants,

v.

Minnesota Pollution Control Agency (MPCA),

Intervenor Defendant.

Janette K. Brimmer, Esq., MN Center for Environmental Advocacy; and Paula Duggan Vraa, Esq., Rider Bennett LLP, counsel for Plaintiff.

Daniel W. Pinkston, Esq., U.S. Department of Justice, and Friedrich A. P. Siekert, Assistant United States Attorney, U.S. Attorney's Office, counsel for Defendant Environmental Protection Agency.

Robert B. Roche, Assistant Attorney General, Minnesota Attorney General's Office, counsel for Intervenor Defendant Minnesota Pollution Control Agency.

The above-entitled matter is before the undersigned United States District Judge pursuant to a Motion for Voluntary Remand and to Stay Briefing Schedule brought by Defendants United

States Environmental Protection Agency, Administrator Steven L. Johnson, United States Environmental Protection Agency Region V, and Acting Regional Administrator Bharat Mathur (collectively, “EPA”). Specifically, EPA moves for a voluntary remand of its November 13, 2002, approval of the “Regional Total Maximum Daily Load Evaluation of Fecal Coliform Bacteria Impairments in the Lower Mississippi River Basin in Minnesota” (“Regional TMDL”) submitted by Defendant-Intervenor Minnesota Pollution Control Agency (“MPCA”) that is the subject of this case. EPA also requests a stay of the briefing on the Motion for Summary Judgment that was filed by Plaintiff Minnesota Center for Environmental Advocacy (“MCEA”) on February 10, 2005, and is scheduled to be heard before this Court on June 3, 2005. MCEA opposes EPA’s motion.

EPA asserts that on March 8, 2005, MPCA “sent a letter to EPA, indicating that MPCA intended to prepare an amended Regional TMDL which would be made available for public review and comment on approximately July 1, 2005.” (Motion for Voluntary Remand and to Stay Briefing Schedule at ¶ 4.) Further, EPA maintains:

After extensive discussions with Minnesota, consideration of Minnesota’s intent to submit a revised Regional TMDL, and review of the current Regional TMDL, EPA has determined that it should reconsider its November 2002 decision approving the Regional TMDL. EPA has concluded that the Regional TMDL previously approved did not adequately consider important aspects of CWA section 303(d) and EPA’s TMDL regulations.

(Memorandum in Support of Motion for Voluntary Remand at 14.)

Based on the Court’s review of the record, EPA’s Motion for Voluntary Remand is denied. EPA did not bring its Motion for Voluntary Remand until long after this litigation was commenced, and then brought it only after MCEA brought a dispositive motion before the Court. In light of these circumstances, the Court finds that EPA’s motion is untimely. Further, the

Court finds that the relief requested by EPA will not necessarily resolve the dispute among the parties. As noted by MCEA, EPA has neither confessed error nor explained how it will change its decisions regarding the Regional TMDL, if it is indeed revised, in order to resolve the matter being litigated. As such, remand is inappropriate.

For the reasons stated, **IT IS HEREBY ORDERED THAT:**

1. Defendant EPA's Motion for Order to Voluntary Remand and Stay Briefing Schedule (Doc. No. 52) is **GRANTED IN PART AND DENIED IN PART;**
2. Insofar as EPA requests remand to reconsider its approval of the Regional TMDL, EPA's motion is **DENIED;**
3. Insofar as EPA requests a stay of the briefing schedule for Plaintiff's Motion for Summary Judgment, EPA's request is **GRANTED;**
4. The parties are directed to agree on a briefing schedule for Plaintiff's Motion for Summary Judgment that will allow the parties to meet the scheduled hearing date of June 3, 2005. If the parties cannot agree on a briefing schedule, the parties are directed to contact Lowell Lindquist, Calendar Clerk, at 651-848-1296, and the Court will select briefing deadlines to comply with its June 3, 2005, hearing date.

Dated: May 5, 2005

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court